

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

ROBERT EARL FOSTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12-4324-CV-C-MJW
	)	
DAN WRIGHT, et al.,	)	
	)	
Defendants.	)	

**JURY SELECTION PROCEDURE**

1. Call jury panel in and seat by number. Jury selection will begin at 9 am.
2. Administer oath to panel.
3. Voir dire examination (court).
4. Voir dire examination (lawyers).
5. Strikes for cause.
6. Select top 15 jurors. Following strikes for cause, we will take the first 15 qualified jurors for the jury panel. Plaintiff and defendant will each have four peremptory strikes. This will leave the Court with a seven member jury.
7. Seat jury.
8. Excuse remainder of panel.
9. Administer oath to jury.

## **COURT'S VOIR DIRE EXAMINATION OF JURY**

### **A. Introduction and Qualifying Questions**

For the record, I am calling the case of **Robert Earl Foster v. Dan Wright and John Doe**, Civil Case No. 12-4324, for trial.

Will counsel for the plaintiff Robert Foster please rise and enter your appearance for the record. (Brent Dwerklotte and David Swaney of Shook, Hardy & Bacon, LLP).

Mr. Dwerklotte, is the plaintiff ready for trial?

Will counsel for defendant Dan Wright please enter your appearance on the record. (Robert Krehbiel of King, Krehbiehl & Hellmich, LLC) Mr. Krehbiehl, is the defendant ready for trial?

Ladies and gentlemen of the jury panel, you have been called here this afternoon in connection with the selection of the jury to try a case entitled **Robert Earl Foster v. Dan Wright and John Doe**. I am Judge Matt Whitworth. Thank you all for coming here today. We are about to begin the process of selecting from your number the persons who will sit as the jury in this case.

I will be asking you certain questions to determine whether you meet the statutory qualifications to make you eligible to sit on a federal jury. Next, I will be asking you questions which deal specifically with your qualifications to serve as a juror for the trial of this case. It is basic to the fairness of this trial, both for the plaintiff and the defendant, that all jurors chosen be qualified and totally impartial. Most of my questions will be directed to the entire jury panel, however, there may be some questions asked of you individually. When I direct a question to you as a group, I will assume that your answer is either in the affirmative (yes) or in the negative (no), depending upon the nature of the question, unless you raise your hand to inform me to the contrary. If I fail to see you raise your hand to inform me or for some reason fail to call upon you, you should not let me go on to the next question. If raising your hand does not get my attention, you should stand up so that I will know that you have something to say. Depending upon your individual circumstances, some questions may seem quite personal or even embarrassing, but I hope not. If a question is one that for some personal reason you do not want to answer in front of all of the other jurors please let us know and we will ask you to come up to the bench where we can discuss your answer out of the hearing of the other jurors. The purpose of asking questions of the jury panel is to insure that a totally fair and impartial jury is selected to

try this case; and to accomplish this purpose, it is necessary for the attorneys and the court to have background information concerning the individual members of the panel. Your responses to the questions asked will require you to be under oath. Therefore, you are now requested to stand for the administration of the oath by the courtroom deputy.

I am first going to ask questions to determine whether or not you meet the statutory qualifications to serve as jurors in federal court.

1. Is there anyone on this panel who is not a citizen of the United States?
2. Is there anyone on this panel who is not at least 18 years of age?
3. To be qualified to serve on this jury, you must have resided in the Western

Judicial District of Missouri for at least the past one year. The Western District of Missouri is comprised of the western 66 counties of the State of Missouri. The Western District may be generally defined geographically as that area of Missouri lying to the west of a line drawn north to south through the central part of the state from the Iowa state line to the Arkansas state line. The area to the west of such line includes the cities of Jefferson City, Columbia, and Fulton. If you have lived in the Western District of Missouri for the past 12 months or longer, you meet the residence requirements.

- a. Is there anyone on the panel who has, within the past 15 months, moved from a location within the state of Missouri to a location outside the state of Missouri?
- b. Is there anyone on the panel who has, within the past 15 months, moved from a location outside the state of Missouri to a location within the state of Missouri?
- c. Is there anyone on the panel who has, within the past 15 months, moved from one county within the state of Missouri to another county within the state of Missouri?
- d. The Central Division of the Western District of Missouri, the Division in which this case is being tried, is comprised of 13 counties. Is there anyone on this panel who does not live within one of the following counties: Pettis, Benton, Hickory, Howard, Cooper, Morgan, Camden, Boone, Moniteau, Miller, Callaway, Cole, and Osage?

The lack of responses to the questions concerning residence shows that each of you meets the residence requirement of the law.

4. Is there any member of the panel who is unable to read, write or understand the English language?

5. Is there any member of the panel who is unable to speak the English language?

6. Is there any member of the panel who has a mental or physical infirmity which would render him or her incapable of rendering satisfactory jury service? This means that you must have no serious problem in hearing or seeing or in sitting for up to two hours without a break or you have no personal problem that would affect your ability to concentrate on the evidence.

7. Is there any member of the panel who has a charge pending against him or her in a state or federal court for the commission of a crime punishable by imprisonment for more than one year, commonly known as a felony?

8. Is there any member of the panel who has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored by pardon or amnesty?

I now have some questions to ask you to determine if any of you may be exempt from serving as a juror because of the nature of your employment.

9. Is any member of the panel a member in active service in the armed forces of the United States?

10. Is any member of the panel a member of a Fire Department?

11. Is any member of the panel a member of a Police Department or Sheriff's Office?

12. Is any member of the panel a public officer in the executive, legislative, or judicial branch of the government of the United States or the state of Missouri, or any subdivision of the state of Missouri such as a city, county, or township?

The next questions I will ask you are intended to ascertain whether or not you belong to a group of persons or an occupational class which might entitle you to be excused from jury duty because of undue hardship or extreme inconvenience to the members of the class or group.

13. Is any member of the panel a registered or practical nurse, student nurse, medical laboratory technician, therapist, full-time student of medical laboratory science, or some other practitioner rendering professional nursing or medical laboratory services?

14. Is any member of the panel a physician, surgeon, dentist, osteopath, chiropractor, x-ray technician, full-time medical or dental student, or some other type of practitioner or student of the healing arts?

15. Is any member of the panel a practicing veterinarian?

16. Is any member of the panel a judge or practicing lawyer?

17. Is any member of the panel charged with the custody and care of a minor child who does not have adequate domestic assistance?

18. Is there any member of the panel who does not have private transportation or adequate public transportation available from your residence to the federal courthouse here in Jefferson City, Missouri?

19. Counsel have estimated that it will take approximately 1.5 to 2 days to try this case. In light of this fact, is there any member of the panel who has a very unusual problem which has not previously been mentioned that would impose a great burden or hardship upon you if you were selected to serve as a juror in this case?

20. Is any member of the panel presently serving as a member of a federal grand jury?

21. Has any member of the panel served as a petit or trial juror for a total of more than 30 days during the last two years?

At this time, I am happy to inform you that each of you is qualified to sit on a federal jury.

**B. Voir Dire Examination by Court**

1. Introduce plaintiff Robert Foster. He formerly resided in the Columbia, Missouri area? He currently resides in Terre Haute, Indiana. Does anyone here believe you may know Mr. Foster?

2. Introduce plaintiff's attorney: The plaintiff Mr. Foster is represented by Brent Dwerklotte and David Swaney of the law firm of Shook, Hardy & Bacon, whose main office is based in Kansas City, Missouri. Have any of you had any business directly or indirectly with Mr. Dwerklotte or Mr. Swaney or any of the lawyers of the Shook, Hardy & Bacon law firm? Are you acquainted in any way with them or any members of their families?

Introduce Paralegal/Legal Assistant (if applicable): Has anyone had any business with him/her? Does anyone know him/her or any members of his/her family?

3. The defendant in this case is Dan Wright. Dan Wright is employed as a police officer with the City of Columbia, Missouri Police Department. Have any of you had business directly or indirectly with Dan Wright? Are any members of the jury panel employed by the City of Columbia? Do any members of the jury panel have any relatives or close personal friends who are employed by the Columbia Police Department? Are any of you acquainted in any way with Dan Wright or any of the members of his/her family?

4. Introduce defendant's attorney: The defendant Dan Wright is represented by Robert Krehbiehl of the law firm King, Krehbiehl and Hellmich, LLC, of St. Louis, Missouri. Have any of you had any business directly or indirectly with Robert Krehbiehl or any of the lawyers of King, Krehbiehl and Hellmich? Are you acquainted in any way with them or with members of their families? Introduce paralegal/legal assistant (if applicable):

Has anyone had any business with \_\_\_\_\_? Does anyone know him/her or any members of his/her family?

5. Introduce court staff: I next want to introduce the Court's staff. Jackie Price is our Courtroom Deputy. Heather Richenberger is our career law clerk. Elizabeth Russell is our term law clerk. (Both are proud graduates of the University of Missouri School of Law.)

\_\_\_\_\_ will be the court reporter during the trial. My name is Judge Matt Whitworth? Does anyone here know any of us? Would the fact that you know \_\_\_\_\_ interfere in any way in your ability to fairly and impartially hear the evidence in this case?

6. State nature of case: Read Joint Jury Statement

This is a civil case brought by the plaintiff Robert Foster against defendant Dan Wright. Plaintiff Robert Foster alleges that on June 26, 2011, the defendant Dan Wright – a member of the Columbia Police Department – used excessive force on him after he had been arrested. The defendant Dan Wright denies these allegations.

Has any member of the jury panel heard about or know anything about this case?

7. At the conclusion of the evidence and arguments in this case it will be my responsibility to instruct you as to the law as it should apply in this case. Have any of you had any legal training or courses in the law?

- Is there anything about that legal training that would keep you from following the instructions given to you by me?

8. Do any of you know any of the following witnesses who may be called to testify at the trial:

#### HAVE EACH PARTY READ LIST OF WITNESSES

9. Have any of you had any legal training of any kind?
10. Have any of you ever been a witness in a criminal or civil case?
11. Have any of you ever made a claim for damages or had a claim made against you of any kind?
12. If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trial and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?
13. Now I will ask the following questions of each member of the jury panel. Please answer the following:
  - a. where you reside and for how long (please give only the city and county)
  - b. your marital status and number of children
  - c. your level of education

- d. the type work you do and your employer
- e. the type of work your spouse/significant other/domestic partner does and his or her employer

We have each of these questions listed on the back of your juror number card in order to aid you in answering this series of questions.

14. Does anyone know of any reason whatsoever why he or she cannot sit as a juror in this case and listen to the evidence and give all sides a fair trial?

**C. Lawyer Voir Dire**

(lawyer questioning)

Ladies and gentlemen, this completes the questioning. The court will be in recess while the attorneys are given an opportunity to select the jury that will hear this case.